MARLIN OIL CORPORATION

IBLA 99-354 Decided April 10, 2003

Appeal from a decision of the Acting State Director of the New Mexico State Office, Bureau of Land Management, upholding an order to plug and abandon an inactive well. NM SDR 99-010.

Affirmed.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Assignments and Transfers--Indians: Leases and Permits: Generally–Indians: Mineral Resources: Oil and Gas: Generally

   The assignee of an Indian oil and gas lease, upon approval of an assignment, becomes the lessee and is responsible for compliance with the lease terms.

2. Indians: Leases and Permits: Generally–Indians: Mineral Resources: Oil and Gas: Generally

   A lessee of an Indian lease may relinquish a lease or a legal subdivision of the leased area. Abandonment of a wellbore does not transfer ownership of the well to the lessor.

APPEARANCES: Robert A. Miller, Esq., Oklahoma City, Oklahoma, for appellant; Grant L. Vaughn, Esq., Office of the Field Solicitor, Southwest Region, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Marlin Oil Corporation (Marlin) appeals from a decision of the Acting State Director, New Mexico State Office, Bureau of Land Management (BLM), dated June 17, 1999, upholding as modified an order issued by the Tulsa Field Office

(TuFO), BLM, and requiring Marlin to submit plans to plug and permanently abandon the Sherman No. 4 well (Sherman No. 4). The well is located in the NW1/4 NW1/4 SW1/4 of sec. 14, T. 19 N., R. 5 E., Payne County, Oklahoma, on Indian oil and gas lease 341.

On behalf of Indian allottee Charles Sherman and his heirs, the Department issued Indian oil and gas lease 341 on September 28, 1915, to Iron Mountain Oil Co. (I69IND302.) In two transfers, Iron Mountain conveyed the entire lease interest to Twin State Oil Co. On December 30, 1936, Twin State transferred 100% of the lease interest to Sun Oil Company (Sun). Thereafter, Sun held record title and was the operator of lease 341. 1/ In 1953, Sun drilled the Sherman No. 3 oil well. In 1954, Sun drilled the Sherman No. 4, a salt water injection well. (Tab 8, Apr. 30, 1954, letter from Acting Deputy Supervisor, to Sun acknowledging receipt of "Notice of Intention" to drill, Apr. 27, 1954; Apr. 27, 1954, Sundry Notices and Reports on Wells; June 3, 1954, Log of Oil or Gas Well, Sherman "A" Well No. 4.)

Almost 30 years later, Sun transferred 100% record title interest in lease 341, 75% to Ronny G. Altman and 25% to Robert D. Burchfield. This transfer, effective December 16, 1983, was approved on January 23, 1987, by the Pawnee Agency, Bureau of Indian Affairs (BIA). (Tab 5, Feb. 6, 1987, stamped copy of "Assignment of Mining Lease.") Altman and Burchfield designated Altman Energy, Inc. (Altman) as operator of the lease, and this designation was approved by BLM in 1986. (Tab 5, Designation of Operator forms, signed by Ronny Altman and Burchfield, effective Apr. 1, 1986.)

On May 12, 1989, the Chief of the Branch of Fluid Operations, TuFO, sent a letter to Altman requesting Altman to submit a sundry notice (Form 3160-5) of its intent to plug and abandon wells on the lease, including the Sherman No. 4, or to justify any well no longer used or useful for operation of the lease as temporarily abandoned. (Tab 7, May 12, 1989, letter from Chief, Branch of Fluid Operations, to Altman.) On July 7, 1989, Altman sent a letter to BLM and included the following information with respect to the Sherman No. 4:

> I am enclosing a copy of the last information in the files from Sun reflecting Brady Well Service invoices and work-orders. Brady pulled out the rods and tubing, then stood by while the well was plugged and abandoned by pumping cement down the tubing several times. This work was performed on July 14 and completed July 20, 1982. We have

---

1/ The record does not contain a copy of the original lease. The parties do not dispute this history of the lease, which appears in documents within Tab 5 of the record submitted to the Board by BLM. See, e.g., July 3, 1950, Memorandum from Deputy Supervisor to District Agency, Pawnee Indian Sub-Agency, Pawnee, OK.

> no information in the files as to who witnessed the plug and abandonment of this well.

(Tab 7, July 7, 1989, Letter from Altman to BLM.) With this letter, Altman submitted a copy of five different well records dated July 14, 15, 16, 19, and 20, 1982, respectively. The records were presented on a form established by the G.R. Brady Well Service, Inc. On these forms, "operator" J. Pruitt indicated that workers, inter alia, removed tubing and plugged the Sherman "Well No. A-4," with cement. From the information therein, Altman contended that Sun's operator had "plugged and abandoned" the well.

On August 21, 1989, Altman sent a letter to BLM enclosing a form entitled "Sundry Notices and Reports on Wells" (Aug. 21, 1989, Sundry Notice). (Tab 8.) On the form, Altman placed an "X" on the box marked "abandonment" for the status of the Sherman No. 4, and then included a short list describing the operations which Sun had undertaken in order to plug the well. Altman noted on the form that the "information was taken from Sun's record in our well file and is the only information we have on record." (Aug. 21, 1989, Sundry Notice.) The form was approved on August 29, 1989, by the BLM, subject to the following "Conditions of Approval": "Approved as to the plugging of this well only. Upon completion of surface restoration, notify this office by submitting an original and four copies of subsequent report of completing surface restoration (form 3160.5)."

At this point, the record reveals confusion on the part of BLM as to whether the Sherman No. 4 was being approved for future plugging by Altman in 1989, and whether the surface was restored. In a letter dated August 29, 1989, TuFO stated that "[o]perations pertaining to the plugging of this well are hereby approved." (Aug. 29, 1989, letter from BLM to Altman.) TuFO notified Altman of its approval of the Aug. 21, 1989, Sundry Notice and that release of bonds or lease obligations could be considered "[w]hen BIA approval of restoration is received by our office." (Tab 6.) In a memorandum dated August 30, 1989, TuFO informed the Pawnee Agency, BIA, that the well was plugged and that a recent field inspection of the well site indicated that surface restoration was completed. TuFO asked BIA to concur, or not, on an attached form. The record contains no evidence that BIA concurred or responded.

Effective August of 1991, Altman and Burchfield designated Marlin as operator of lease 341. (Tab 5, Aug. 6, 1991, letter from Altman to BLM; July 31, 1991, Designation of Operator, signed by Ronny Altman; May 31, 1991, Designation of Operator, signed by Margaret S. Burchfield.) They then assigned 100% record title to Marlin during the same year. (Tab 5, Assignment of Mining Lease, July 18, 1991, signed by Ronny Altman; Assignment of Mining Lease, May 31, 1991, signed by Burchfield.) On September 27, 1991, BIA requested approval from BLM of the

assignment. (Tab 6.) On October 10, 1991, TuFO issued an "Assignment" to review the pending transfer of interest to Marlin. (Tab 6.) An Assignment Request indicates that a field inspection of the lease was conducted on that date, for purposes of releasing Altman's bond and that "wells 1, 2 & 4 P & A approved," while the Sherman No. 3 oil well required plugging. (Tab 6, Assignment Request, indicating "date of last inspection: 91/10/09"; "Assignment or Bond Termination Request Checklist,"
Jan. 28, 1992.) The assignment to Marlin was approved by the Pawnee Agency, BIA, on February 5, 1992. (Tab 5, Feb. 11, 1992, BIA Memorandum, Oil and Gas Lease Assignments Approved.)

Subsequent documentation in the record indicates that BLM focused on the Sherman No. 3, and ordered Marlin to plug that well. (Tab 6, June 23, 1993, letter from TuFO to Marlin.) Marlin objected, alleging that it had assigned 100% record title to Highland Minerals, Inc. (Highland), in January of 1992, and designated Highland as operator. (Tab 6, July 1, 1993, letter from Marlin to BLM.) The record indicates that, if there was a transfer to Highland, it was never completed. 2/ Thus, BLM considered Marlin to be record title holder and operator, and ordered Marlin to plug the Sherman No. 3 well. (Tab 6, July 9, 1993, letter from BLM to Marlin.) Marlin did so.

Subsequently, it appears that BLM began to investigate the Sherman No. 4. The record contains evidence that a copy of the Aug. 21, 1989, Sundry Notice submitted by Altman regarding that well was forwarded to BIA on September 29, 1994. This transfer is reflected in a red stamp, with the notation "Surface Restoration Approved, Yes __ No __." (Tab 8.) Neither blank is checked on this copy.

According to the record, on June 16, 1998, Marlin asked BLM to release its bond for lease 341. (Tab 5, July 31, 1998, letter from Marlin to BLM, referencing June 16 request.) Another copy of the Aug. 21, 1989, Sundry Notice form, sent June 17, 1998, contains the same stamp, in black ink, regarding surface exploration described above, with a large inked "X" in the blank marked "No." (Tab 8.) On July 31, 1998, Marlin sent a second letter requesting an "inspection of the captioned lease so that Marlin can obtain a release of our bond." (Tab 5.) At the bottom of this letter, received by BLM on August 3, 1998, TuFO stamped another request for the status of surface disturbance. The word "rejected" is circled and also handwritten, with the date August 12, 1998.

2/ Marlin copied to BLM a letter it sent to Highland demanding that the latter comply with BLM's order to plug the Sherman No. 3. (July 1, 1993, letter from Marlin to Highland.) This letter indicates that Marlin discovered that Highland had not met bonding requirements that would have been necessary to complete the transfer.

On November 4, 1998, TuFO conducted a surface inspection of lease 341 and noted an unplugged wellbore for the Sherman No. 4. BLM discovered that only a particular zone on that well had been cemented. (Nov. 5, 1998, BLM letter to Marlin, Attachment entitled "Conditions of Approval to Plug and Abandon" ("2768-2783 w/60 shots Zone C-mt - off in 1982").) 3/ On November 5, 1998, TuFO sent a letter to Marlin ordering it "to plug and abandon Well No. 4, Sherman * * *."

Marlin responded by letter, stating:

> When Marlin purchased the Sherman A-3 well in 1991, we were not aware of the unplugged Sherman #4. Apparently, the BLM was also not aware of the existence of the Sherman #4 until a field inspector located the well during an inspection of Marlin's location. Also, it is evident that any additional surface restoration required for the Sherman #4 is due to conditions that existed prior to Marlin's ownership of the lease. Therefore, it is Marlin's position that the plugging of this well and any associated surface restoration is not Marlin's responsibility.

(Nov. 9, 1998, letter from Marlin to BLM.)

On May 5, 1999, TuFO issued an order requiring Marlin to plug and abandon the Sherman No. 4, citing BLM regulations regarding lease obligations at 43 CFR Subparts 3162 and 3163. (Tab 4, May 5, 1999, order.) Marlin requested State Director Review (SDR) in a letter dated May 20, 1999. While Marlin mentioned its attempted transfer of the lease to Highland, it did not actually contend that the transfer was approved. Rather, Marlin contended that "[o]perations of the Sherman A # 4 were never transferred from Sun Oil Company. * * * Case law of the EPA does not recognize the tranfer of liability, only ownership. The courts have consistently found that the perpetrator has the liability. Therefore, it is obvious that Sun Oil Company should be responsible for plugging the well." (Tab 3, May 20, 1999, Request for SDR (emphasis Marlin's).)

The State Director issued the June 17, 1999, decision upholding the May 5 order as modified. (Tab 2.) The SDR decision recognized Marlin as the legal operator and holder of record title and upheld TuFO's order to submit a sundry notice of intent to abandon. The decision rejected the notion that Highland or Sun was either the legal operator or record title holder of the lease. Marlin timely appealed. (Tab 1.)

3/ Information regarding the 1998 inspection derives only from comments in this document and in the June 17, 1999, decision challenged in this appeal. No separate inspection report appears in the record.

In its Statement of Reasons (SOR), Marlin raises two central arguments. First, Marlin contends that Sun's act of "placing cement at the bottom of the wellbore and a plug valve at the surface" of the Sherman No. 4 constitutes an abandonment of the well, see SOR at 2, or an intent to abandon (SOR at 3). Citing Oklahoma law (SOR at 2-3), Marlin argues that an abandoned wellbore on a mineral leasehold is the property of the surface owner and not of the mineral leasehold owner. Marlin alleges that, consequently, when Sun conveyed its interest in lease 341 to Altman and Burchfield, Sun did not convey to Marlin any right, title, or interest to the Sherman No. 4. Marlin acknowledges that Sun actually only temporarily plugged the well (SOR at 3), but argues that the Board should view the record as reflecting an intent on the part of Sun to permanently abandon the well and thereby relinquish possession. In its second argument, Marlin alleges that this alleged intention to permanently plug the well places any burden to do so now on Sun. (SOR at 4.) 4/

[1] Under Federal law and regulations applicable to Federal and Indian oil and gas leases, lease obligations flow to the lease holder. As described above, the record reflects unequivocally that Marlin is both operator and sole record title holder of lease 341. Thus, Marlin assumed responsibility for compliance with the terms of lease 341, including any activity with respect to the wells found thereon. Rules applicable to Federal and Indian leases state that a well no longer capable of production is to be permanently plugged and abandoned. 43 CFR 3162.3-4. As record title holder, Marlin has a duty to comply with this regulation. BLM properly exercised its authority in requiring Marlin to plug and abandon the Sherman No. 4.

Marlin contends, however, that the duty and liability to plug rests with Sun because Sun had intended to abandon permanently the Sherman No. 4. However, after approval to the transfer of record title to a lease by the authorized officer, an assignee is responsible for all lease obligations. "After approval of the transfer of record title, the transferee and its surety shall be responsible for the performance of all lease obligations, notwithstanding any terms in the transfer to the contrary." 43 CFR 3106.7-2. The assignee of a Federal oil and gas lease, upon approval of an assignment to him, becomes the lessee of the government and is responsible for compliance with the lease terms and any regulations affecting the lease. Ralph G. Abbott, 115 IBLA 343, 346 (1990). Furthermore, while the well operator has primary responsibility for plugging wells, the ultimate responsibility remains with the record title owner of the lease. Id.; see also Stanco Petroleum, Inc., 143 IBLA 86, 88 (1998).

4/ Marlin does not square this position with its first argument that the wellbore became, on abandonment by Sun, the property of the Indian allottee lessor, which, presumably, would place the burden to plug on lessor Sherman or his heirs.

This Board rejected virtually identical arguments to those asserted by Marlin here regarding an Indian lease in Oklahoma in Cross Creek Corp., 131 IBLA 32 (1994). In that case, Cross Creek obtained an approved assignment of record title to an Indian lease and, subsequently, was ordered to plug and abandon the well. Cross Creek attempted to impose liability on the prior or current operator. The Board rejected this argument, concluding: "It is established that, regardless of whether the lessee of record drilled or reworked the wells or produced from them, it is still ultimately responsible for plugging and abandoning them as the lessee of record, even if it did not profit from the earlier production." 131 IBLA at 37, citing 43 CFR 3106.7-2; cf. AEJH 1985 Limited Partnership, 143 IBLA 283, 289 (1998).

Moreover, contrary to Marlin's assertions, a plugged well remains an asset of the lessee. Penroc Oil Corp., 84 IBLA 36, 44 (1984). In that case, a lessee argued that the abandonment of a well constituted transfer of any obligation with respect to the well to the Federal lessor. The Board rejected that argument stating that abandonment does not result in relinquishment of any leased land, or any rights pursuant to the lease. Id. There, the Board noted that the Mineral Leasing Act of 1920 (MLA) only permits relinquishment of "any legal subdivisions of the area included within the lease," 30 U.S.C. § 187 (1982), and that this did not permit relinquishment, express or implied by abandonment, of a wellbore. The same principle adheres to an Indian lease under the terms of 43 CFR 3108.1, which permits a lessee to relinquish only a legal subdivision of the leased area. A lessee continues to have a right to re-enter its plugged wells to further drill, explore, or develop the leasehold at any time during the lease term. Id. Therefore, no relinquishment of any leased land or rights occurs simply by plugging and abandoning a well.

To the extent that Marlin relies on Oklahoma law in support of his contentions that an abandoned wellbore is the property of the surface owner and that Sun intended to permanently abandon the Sherman No. 4, this reliance is misplaced. The cited cases concern private leases, while the case at hand deals with an Indian lease, administered on behalf of the allottee by the Federal government. See SOR at 2-4, citing McDaniel v. Moyer, 662 P.2d 309 (Okla. 1983); White v. Conoco, Inc., 710 F.2d 1447, 1448 (C.A. 10 (Okla.) 1983); Loriaux v. Corporation Commission, 514 P.2d 941 (Okla. 1973); Gannon v. Mobil Oil Co., 573 F.2d 1158(C.A. 10 (Okla.) 1978). All operations conducted on a Federal or Indian oil and gas lease are subject to federal regulations issued pursuant to the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 et seq., and promulgated at 43 CFR Part 3100. Specifically, 43 CFR 3161.1(a), subjects all operations on Indian oil and gas leases to the rules in Part 3100, implemented under the authority, inter alia, of the MLA. Thus, these regulations, and not State law, prevail over the disposition of this case. See, e.g., 2 Williams and Meyers, Oil and Gas Law § 405.1 (2002); Continental Oil Company, 74 I.D. 229, 234-35 (1967); Kennedy and Mitchell, Inc., 68 IBLA 80, 82 (1982);

Kirby Exploration Company of Texas (On Reconsideration), 149 IBLA 205, 211 (1999) ("Department is not bound to follow Oklahoma State law governing collection of royalty" on Indian oil and gas lease).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

_____
Lisa Hemmer
Administrative Judge

I concur:

_____
Will A. Irwin
Administrative Judge